

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5806 OF 1996

Shri Uttam Sonba Nigade
Proprietor of Rainbow Poultry
Farm, At & Post:Wagholi,
Tal.:Haveli, Dist.: Pune ... Petitioner

V/s.

1.Shri S.D. Kadam
Plot No.4, 15 August
(Near) Zopadpatti
Somwar Peth, Pune - 11

2. Presiding Officer
II Labour Court, Pune ... Respondents

Mr.R.R. Salvi for Petitioner
Ms.Seema Sarnaik for Respondent No.1

CORAM: SMT.NISHITA MHATRE, J.

DATED: AUGUST 18, 2004

ORAL JUDGMENT:

. The Petition has been filed against the award dated 26.4.1996 directing the employer that is the Petitioner herein to pay a lumpsum amount of Rs.20,000/- as compensation and reinstatement and other legal dues to the respondent-workman. The workman that is, Respondent No.1 herein, was in employment of the Petitioner since 1983. According to the Petitioner, the workman submitted his resignation voluntarily on 7.1.1989 since he was going to be employed with the Government Poultry Farm from 8.1.1989.

2. The workman raised a dispute regarding the termination of his services and a reference was made before the Labour Court, Pune in 1990. In his statement of claim, the workman contended that his services had been illegally terminated on and from 4.1.1989 since he had made a demand for payment of minimum wages with the employer. He stated that he was, therefore, entitled to be reinstated with continuity of service and full backwages. In the written statement filed by the Petitioner, it was contended that the respondent-workman had left the employment on his own and the Petitioner had been given a letter of resignation dated 7.1.1989 by the workman. This letter of resignation was witnessed by two independent witnesses and, therefore, the case made out by the workman that he had been terminated from service illegally was incorrect.

3. Evidence of parties was led before the Labour Court. The workman deposed that his services came to be terminated on the ground that he was unable to work and because many a times he demanded an increase in salary. He has further stated that he secured employment two or three months after his termination from service. In the cross-examination, he has stated that he did not know either of the persons who had purportedly witnessed the letter of resignation. However, he has denied that he

voluntarily resigned from duty. The employer examined himself and placed on record the letter of resignation submitted by the workman. The employer also examined the two independent witnesses both of whom deposed that they had seen the workman putting his thumb impression on the letter of resignation and that they were aware that the contents of the letter were regarding the resignation tendered by the workman. One of the witnesses has stated that the workman was known to her for 10 to 12 years and that he was working as a labourer on the Farm of the Petitioner and was staying therein.

4. The Labour Court by its order dated 26.4.1996 has held that the resignation letter was not voluntary but was procured by the employer. The Labour Court came to this conclusion because the wage registers produced by the employer showed that from 4.1.1989, the remark "left employment on his own" appeared on the register. The Labour Court has, therefore, found that the so called letter of resignation appeared to be procured from the workman and was not voluntary in nature. On this basis, the Labour Court came to the conclusion that the termination of services was illegal. However, in view of the fact that the workman had secured employment elsewhere and was drawing wages at a higher rate the Labour Court granted compensation in lieu of the reinstatement.

5. Heard advocates.

6. The Labour Court has proceeded on the footing that the resignation tendered was not voluntary but was given by the workman under pressure and coercion. The Labour Court while doing so, has not considered the fact that the two independent witnesses have testified that the workman had endorsed the letter of resignation with his thumb impression in their presence. The Labour Court has also not considered the fact that these two witnesses had no enmity with the workman concerned and, therefore, there was no reason for them to depose falsely in order to favour the employer. Although the registers produced had been considered by the Labour Court, the finding is that till 3.1.1989, the workman had remained present and reported for work. Thereafter, the Labour Court has observed thus:

"Further against his name remark is appearing that of "left employment on his own".

This endorsement in the register has not been challenged by the workman. The award does not indicate on which date the Petitioner's services were terminated. The finding of the Labour Court that the Petitioner had terminated the services of the workman is not based on

the legal evidence on record. The award must therefore, be set aside.

7. There is no doubt that the respondent-workman secured employment within three months of the date of tendering his letter of resignation. Therefore, if at all, the respondent would be entitled to wages for three months as well as a lumpsum payment towards gratuity and all other legal dues. In the circumstances, I am of the view that the payment of to Rs.7,500/- to the workman would meet the ends of justice. The Petitioner has already deposited an amount of Rs.20,000/- in this Court at the time of admission which had been invested in a fixed deposit. Accordingly, the workman is entitled to withdraw from this Court an amount of Rs.7,500/- together with pro-rata interest on that amount from the date of investment till today. The balance amount together with accrued interest shall be returned to the Petitioner.

8. Rule made absolute accordingly. No order as to costs.

9. Parties be provided an authenticated copy of this order.